

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

UNITED STATES OF AMERICA,	)	JURY TRIAL DEMANDED
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 4:21-cv-00230
	)	
ELIZABETH DEMBO,	)	
	)	
Defendant.	)	

**ANSWER & AFFIRMATIVE DEFENSES OF DEFENDANT ELIZABETH DEMBO**

COMES NOW Defendant Elizabeth Dembo (“Defendant” or “Dembo”) and for her Answer and Affirmative Defenses to the Complaint, states as follows:

1. This paragraph states an opinion and other generalized statements which are not directed to Defendant Elizabeth Dembo and to which no answer is required. To the extent an answer is required, Defendant denies the allegations set forth herein as they may pertain to her.

2. This paragraph states an opinion and other generalized statements which are not directed to Defendant Elizabeth Dembo and to which no answer is required. To the extent an answer is required, Defendant denies the allegations set forth herein as they may pertain to her.

3. Denied.

4. Denied.

**JURISDICTION AND VENUE**

5. Admitted.

6. Admitted.

7. Admitted.

## **PARTIES**

8. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

9. Dembo admits that since approximately July 2013 she has been a licensed pharmacist in Missouri. Dembo admits to having been the pharmacist in charge at Olive Street Pharmacy. The remainder of this paragraph states opinions and other generalized statements which are not directed to Defendant Elizabeth Dembo and to which no answer is required. To the extent an answer is required, Defendant denies the remaining allegations set forth herein as they may pertain to her.

## **THE CONTROLLED SUBSTANCES ACT**

10. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

11. Defendant admits that controlled substances are categorized into five schedules based on a variety of factors. Defendant is without sufficient information or belief to admit or deny the remaining allegations stated in this paragraph, and therefore, denies the same.

12. This paragraph state legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

13. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

14. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

15. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

16. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

17. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

18. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

19. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

20. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

21. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

#### **TIRF REMS PROGRAM**

22. Defendant admits that certain immediate-release fentanyl drugs have a particularly high potential for misuse, addiction, overdose, and other serious problems, including death. Except as specifically admitted herein, Defendant is without sufficient information to admit or deny the remaining allegations of this paragraph, and therefore denies the same.

23. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

24. Defendant admits that the listed substances are involved in TIRF-REMS. To the extent not specifically admitted herein, Defendant denies the remaining allegations set forth in this paragraph.

25. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

26. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

27. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

28. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

29. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

30. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

#### **THE MEDICAID PROGRAM**

31. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

32. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

33. Admitted.

34. Denied to the extent this paragraph is alleging that Defendant knew Olive Street was not entitled to Medicaid payments for the prescriptions referenced in this Complaint that were submitted to Medicaid for payment.

35. Denied to the extent this paragraph is alleging that Defendant knew Olive Street was not entitled to Medicaid payments for the prescriptions referenced in this Complaint that were submitted to Medicare/DDS for payment.

#### **THE MEDICARE PROGRAM**

36. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

37. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

38. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

39. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

40. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

41. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

42. This paragraph states legal conclusions and quotes statutory language, and therefore no answer is required; however, to the extent an answer is deemed required, Defendant denies the allegations.

43. Admitted.

44. Denied to the extent this paragraph is alleging that Defendant knew Olive Street was not entitled to Medicare payments for the prescriptions referenced in this Complaint that were submitted to Medicare for payment.

45. Denied to the extent this paragraph is alleging that Defendant knew Olive Street was not entitled to Medicare Part D payments for the prescriptions referenced in this Complaint that were submitted to Medicare/CMS for payment.

### **FACTUAL BACKGROUND**

46. Admitted.

47. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

48. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

49. Denied.

50. Denied.

51. Admitted.

52. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

53. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

54. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

55. Denied.

56. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

**SPECIFIC EXAMPLES OF CSA AND FCA VIOLATIONS**

61. Denied.

62. Denied.

*Patient J.D.*

63. Denied.

64. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

65. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

66. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

67. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

68. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

69. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

70. Denied.

71. Denied.

72. Denied.

*Patient M.R.*

73. Denied.



74. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

75. Denied.

76. Denied.

77. Denied.

78. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

79. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

80. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

81. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

82. Denied.

83. Denied.

*Paragraph T.K.*

84. Denied.

85. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

86. Denied.

87. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

88. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

89. Denied.

90. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

91. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

92. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

93. Denied.

94. Denied.

*Patient S.T.*

95. Denied.

96. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

97. Denied.

98. Denied.

99. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

100. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

101. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

102. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

103. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

104. Denied.

105. Denied.

*Patient E.H.*

106. Denied.

107. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

108. Denied.

109. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

110. Denied.

111. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

112. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

113. Denied.

114. Denied.

*Patient H.L.*

115. Denied.

116. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

117. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

118. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

119. Denied.

120. Denied.

121. To the extent this paragraph states prescriber information, Defendant is without sufficient information to admit or deny the allegations and therefore denies the same. The information regarding criminal charges against Ali and Librach are not directed toward this Defendant and therefore no answer is required.

122. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

123. Denied.

124. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

125. Defendant is without sufficient information or belief to admit or deny the allegations stated in this paragraph, and therefore, denies the same.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

**Count 1:  
Civil Penalties for Unlawful Dispensing of  
Controlled Substances under the Controlled Substances Act**

130. Defendant incorporates by reference her answers to Paragraphs 1 through 129 of the Complaint as if fully set forth herein.

131. Denied.

132. Denied.

133. Denied.

**Count II:  
False or Fraudulent Claims to Medicaid and  
Medicare for Prescription Drugs in Violation of the False Claims Act**

134. Defendant incorporates by reference her answers to Paragraphs 1 through 133 of the Complaint as if fully set forth herein.

135. Denied.

136. Denied.

137. Denied

**DEMAND FOR RELIEF**

WHEREFORE, having fully answered the Complaint, Defendant Elizabeth Dembo requests the Complaint be dismissed, with prejudice, that all Plaintiff's claims and demands for relief be denied, for Defendant's costs, and for such other and further relief as is deemed just and necessary under the circumstances.

**DEMAND FOR JURY TRIAL**

Pursuant to F.R.C.P. 38, Defendant demands a trial by jury on all matters.

**AFFIRMATIVE DEFENSES**

1. Some or all of the Plaintiff's claims are barred by the statute of limitations for the False Claims Act and will be determined by the dates of the prescriptions.

2. Some or all of Plaintiff's claims are barred by the statute of limitations for the Controlled Substances Act and will be determined by the dates of the prescriptions.

3. No statements or actions made or taken by Dembo were material in any decision by Medicare/Medicaid/CMS decision to pay any claims, and Medicare/Medicaid/CMS had pre-authorized the prescriptions through and by statements made by others and Medicare/Medicaid/CMS would have paid the claims regardless of any action or statement allegedly taken by Defendant.

4. For further answer and defense, Defendant states that Plaintiff by words and/or conduct consented to the acts of Defendant and the reasonable consequences thereof.

5. While Defendant denies any liability, to the extent she is found to be liable any award against her should be reduced by the comparative fault of the Plaintiff and the contributory actions of as of yet unnamed third-parties.

6. Defendant reserves the right to amend or supplement these affirmative defenses as discovery in this matter continues.

Respectfully submitted,

**NEWTON BARTH, L.L.P.**

By: /s/ Talmage E. Newton IV  
Talmage E. Newton IV, MO56647  
[talmage@newtonbarth.com](mailto:talmage@newtonbarth.com)  
Brandy B. Barth, MO56668  
[brandy@newtonbarth.com](mailto:brandy@newtonbarth.com)  
555 Washington Ave, Ste 420  
St. Louis, Missouri 63101  
(314) 272-4490 – Office  
(314) 762-6710 – Facsimile

*Attorneys for Defendant Elizabeth Dembo*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 26<sup>th</sup> day of April, 2021 the foregoing was served upon all parties of record via the Courts' electronic filing system.

/s/ T. Newton